IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 108 OF 1999

Goa Carbonic Industries
Pvt. Ltd.,a Private
Limited Company) having
its registered Office
and factory at Zuarinagar,
Goa - 403 726. ... Appellants/Original Plaintiffs

versus

Bharat Pumps & Compressors Ltd.,
(a Govt. of India enterprise
which is a subsidiary of Bharat
Yantra Nigam Ltd.) having its
registered office and works at
Naini, Allahabad - 211010,
Uttar Pradesh. ... Respondents/Original Defendants

Mr. A. F. Diniz, Advocate for the Appellants.

Mr. S. G. Bhobe, Advocate for the Respondents.

CORAM : S. A. BOBDE &
N. A. BRITTO, JJ.

DATE : 15TH JUNE, 2004.

ORAL JUDGMENT(PER N.A.BRITTO, J.)

The Plaintiffs in Special Civil Suit No.138/92/A have filed the present Appeal against the Order dated 17th June, 1999 of the learned Civil Judge, Senior Division at Vasco-da-Gama not only rejecting the plaint filed by the Plaintiffs but also dismissing the suit of the Plaintiffs.

2. At the time of arguments, it is conceded that the suit could not have been dismissed but at the most the plaint could have been rejected. The plaint has been rejected for want of territorial jurisdiction in entertaining the same.

3. Some more facts are required to be noted to dispose of the present Appeal. The Plaintiffs by their letter dated 29th September, 1989, written from Zuarinagar within the jurisdiction of the Court at Vasco-da-Gama, informed the Defendants at Naini, Allahabad that they were interested in purchasing about 1,500 carbon dioxide cylinders of 31 kgs. each and further requiring them to inform the Plaintiffs whether they were in a position to supply the same.

4. The Defendants by their letter dated 17th October, 1989, quoted to the Plaintiffs the price of Rs.1,400/- per cylinder. The Plaintiffs again by another letter dated 30th November, 1989, informed the Defendants that they were frequent purchasers of the said cylinders and that they had found the price to be on the higher side and asked the Defendants whether they could reduce the price at Rs.1325/- per cylinder. In reply to the said letter, by letter dated 10th December, 1989, the Defendants informed the Plaintiffs that as desired by them, as a special case they were

agreeing to supply the said cylinders at the unit price of Rs.1325/-(excluding valve and cap).

5. By letter dated 13th January, 1990, the Plaintiffs placed an order for 360 cylinders(two full truck loads) and enclosed therewith a Demand Draft for Rs.1,00,000/- being approximately 20% of the advance payment towards the said cylinders.

6. Subsequently, by letter dated 21st January, 1990, the Defendants informed the Plaintiffs that they should amend the order for 360 cylinders at the price of Rs.1530/- per cylinder or else they ought to purchase 500 cylinders at the unit price of Rs.1480/- per cylinder. Thereafter, there were differences between both the parties and the dispute started culminating in the Plaintiffs sending a legal notice dated 24th June, 1992 and then filing the suit on 7th December, 1992.

7. The Defendants came up with an application dated 2nd September, 1996, for rejection of the plaint, styling the said application being one under Order 7, Rule 11 r/w Section 20 C.P.C. and along with the said application filed terms and conditions which the Plaintiffs now say the Plaintiffs never received.

8. The learned Civil Judge by the impugned Order dated 17th June, 1999, came to the conclusion that in the light of the said terms and conditions the jurisdiction to entertain the suit was at Naini, Allahabad. Alternatively, the learned Civil Judge came to the conclusion that the cause of action arose where the advance payment was made by the Plaintiffs to the Defendants i.e. to say at Naini, Allahabad. The first question is whether the learned Civil Judge could have relied upon the terms and conditions which the Defendants had produced and which the Plaintiffs say they never received.

9. Order 7 Rule 11 C.P.C. deals with rejection of plaint and it provides that the plaint shall be rejected in the following case:-

a). where it does not disclose a cause of action;

b). where the relief claimed is undervalued, and the Plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

c). where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the Plaintiff, on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;

d). where the suit appears from the statement in the plaint to be barred by any law(Emphasis supplied).

10. There cannot be any two opinions that at the stage of rejection of the plaint, what the Court is required to consider are the averments made in the plaint and not defences taken by the Defendants or the materials produced by the Defendants in support of the said defences.

11. In the above context, reference could be made to the case of **Saleem Bhai and others** v. **State of Maharashtra and others**((2003) 1 SCC 557), relied upon by Mr. A. F. Diniz, learned Counsel for the Appellants/Plaintiffs. The Hon'ble Supreme Court in this case has stated that a perusal of Order 7 Rule 11 C.P.C. makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial Court can exercise the power under Order 7 Rule 11 C.P.C. at any stage of the suit – before registering the plaint or after issuing summons to the Defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order 7 C.P.C., the averments in the plaint are germane, the pleas taken by the Defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to

file the written statement without deciding the application under Order 7 Rule 11 C.P.C. cannot but be procedural irregularity touching the exercise of jurisdiction by the trial Court. The order, therefore, suffers from non-exercising of the jurisdiction vested in the Court as well as procedural irregularity.

12. It is, therefore, obvious that the learned Civil Judge could not have referred to or relied upon the said terms and conditions whilst rejecting the plaint, and which were produced by the Defendants along with their said application for rejection of the plaint.

13. The next question is where the cause of action to file the suit arose.

14. Mr. S. G. Bhobe, learned Counsel for the Respondents/Defendents submits that the offer of the Plaintiffs was accepted by the Defendants at Naini, Allahabad after the Defendants received the letter dated 30th November, 1989 and when the Defendants agreed to supply the cylinders at the rate of Rs.1325/- per cylinder.

15. On the other hand, Mr. A. F. Diniz, learned Counsel for the Appellants/Plaintiffs submits

that the offer of the Defendants was accepted by the Plaintiffs at Zuarinagar and when the Plaintiffs after accepting the said offer of the Defendants to supply the said cylinders at the rate of Rs.1325/- per cylinder paid a sum of Rs.1,00,000/- being 20% of the advance towards the cost of the said cylinders.

16. There is no dispute that the said letter dated 13th January, 1990, along with the said Demand Draft was posted by the Plaintiffs at Zuarinagar within the jurisdiction of the Court at Vasco-da-Gama to the Defendants at Naini, Allahabad.

17. In support of his submission, Mr. Diniz, has placed reliance on the case of **Bhagwandas Goverdhandas Kedia** v. **M/s. Girdharlal Parshottamdas and Co., and others**(AIR 1966 SC 543). In this case, the Hon'ble Supreme Court has inter alia, referred to Section 4 of the Indian Contract Act, 1872 and has stated in unequivocal terms that the contract becomes complete as soon as the acceptance is made by the acceptor and unless otherwise agreed expressly or by necessary implication by the adoption of a special method of intimation, when the acceptance of offer is intimated to the offeror.

18. Having considered the rival contentions, we

are of the view that the Defendants' offer to supply the cylinders at Rs.1325/- per cylinder was accepted by the Plaintiffs at Zuarinagar when the Plaintiffs posted letter dated 13th January, 1990, enclosing the Demand Draft. It is settled law that acceptance turns the offer into a contract and therefore it follows that contract is completed not from the place the offer emanates but where it is accepted. Therefore, in this case since posting of acceptance was done at Zuarinagar, Goa, the cause of action for filing the suit arose at the place of posting i.e. Zuarinagar. By no stretch of imagination it could be said that it is the Defendants who accepted Plaintiffs offer at Naini, Allahabad when the Defendants accepted the offer of the Plaintiffs contained in letter dated 30th November, 1989. In fact there was no offer to be accepted by the Defendants in the Plaintiffs letter dated 30th November, 1989. On the contrary, it is the Defendants who renewed their original offer by letter dated 10th December, 1989 by offering a reduced price which renewed offer was accepted by the Plaintiffs at Zuarinagar by posting the letter of acceptance with Demand Draft on 13th January, 1990 and that completed the contract between the Plaintiffs and the Defendants at Zuarinagar.

19. That being the position, in our opinion and

based on the averments in the plaint, which otherwise are not very satisfactory, the learned Civil Judge certainly ought to have held that she had jurisdiction to entertain the suit. In other words, the learned Civil Judge, in the circumstances ought not to have rejected the plaint. It may be noted that in case the averments in the plaint were not complete, the learned Civil Judge, Senior Division, Vasco-da-Gama was certainly entitled to look into the letters exchanged between the parties which formed part of the plaint. The impugned Order of the learned Judge deserves to be set aside on both counts.

20. Consequently, the Appeal deserves to succeed and the impugned Order dated 17th June, 1999, is hereby set aside. Both the parties are directed to appear before the learned Civil Judge, Senior Division, Vasco-da-Gama for further proceedings in the suit on 1st July, 2004, at 10.30 a.m.

S. A. BOBDE, J.

N. A. BRITTO, J.

RD.